

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

PAULA BAILEY, KRYSTAL CLARK,
and HOPE ZENTZ, on behalf of
themselves and others similarly situated,

Plaintiffs,

v.

HEIDI WASHINGTON, in her official
and individual capacity, JEREMY
HOWARD, in his individual and official
capacity, SHAWN BREWER, in his
official and individual capacity,
KENNETH MCKEE, in his individual
and official capacity, JEREMY BUSH, in
his individual and official capacity, LIA
GULICK, in her individual and official
capacity, ED VALLAD, in his individual
and official capacity, DAVID
JOHNSON, in his individual and official
capacity, KARRI OSTERHOUT, in her
individual and official capacity, JOSEPH
TREPPA, in his official and individual
capacity, DAN CARTER, in his official
and individual capacity, RICHARD
BULLARD, in his official and individual
capacity, and TONI MOORE, in her
official and individual capacity,

Defendants.

Case No. 2:19-cv-13442 VAR-EAS

District Judge Victoria A. Roberts
Mag. Judge Elizabeth A. Stafford

MARKO LAW, PLLC

Jonathan R. Marko (P72450)
1300 Broadway Street, Suite 500
Detroit, MI 48326
P: (313) 777-7LAW
jon@jmarkolaw.com

NICHOLS KASTER, PLLP

Matthew H. Morgan (MN304657)
Rebekah L. Bailey (MN0389599)
Nicole J. Schladt (MN0400234)
80 South Eight Street, Suite 4700
Minneapolis, MN 55402
P: (612) 256-3200
morgan@nka.com

**PITT MCGEHEE PALMER &
RIVERS PC**

Cary S. McGehee (P42318)
Beth M. Rivers (P33614)
Channing Robinson-Holmes
(P81698)
117 W. 4th Street, Suite 200
Royal Oak, MI 48067
P: (248) 398-9800
cmcgehee@pittlawpc.com

**LAW OFFICES OF DAVID S.
STEINGOLD, PLLC**

David S. Steingold (P29752)
Samantha M. Baker (P83674)
500 Griswold Street, Suite 2320
Detroit, MI 48226
P: (313) 962-0000
detroitdefender@yahoo.com

EXCOLO LAW, PLLC

26700 Lahser Road, Suite 401
Southfield, MI 48033
P: (866) 939-2656

MI DEP'T OF ATTORNEY GEN.

Scott A. Mertens (P60069)
Kristen M. Heyse (P64353)
Michael Dean (P71333)
Zachary Austin Zurek (P80116)
John L. Thurber (P44989)
Jennifer A. Foster (P75947)
MDOC Division
P.O. Box 30217
Lansing, MI 48909
P: (517) 335-3055
mertensS@michigan.gov

Attorneys for Defendants

sradner@excololaw.com

*Attorneys for Plaintiffs and the
Putative Classes*

STIPULATED ORDER CLARIFYING CLAIMS

Plaintiffs Paula Bailey, Krystal Clark, and Hope Zentz, on behalf of themselves and their proposed class actions of similarly situated inmates (collectively “Plaintiffs”), and Defendants the Michigan Department of Corrections, Heidi Washington, Jeremy Howard, Shawn Brewer, Kenneth McKee, Jeremy Bush, Lia Gulick, Ed Vallad, David Johnson, Karri Osterhout, Joseph Treppa, Dan Carter, Richard Bullard, and Toni Moore, (“Defendants”), by and through their above attorneys, hereby submit the following Stipulation to clarify the scope of Plaintiffs’ active claims.

WHEREAS:

1. Plaintiffs filed a class action complaint on November 20, 2019, (ECF No. 1);
2. On April 20, 2020, Defendants filed a motion to dismiss on several grounds, (ECF Nos. 52, 54), and also separately moved for summary judgment, (ECF Nos. 53, 56);
3. In response to the MDOC Defendants’ motion to dismiss, Plaintiffs in part made the following representations:

Under Count II of Plaintiffs' Consolidated Complaint, Plaintiffs bring claims for gross negligence against, in part, Heidi Washington. Defendants argue that Washington is entitled to absolute immunity from tort liability, and the gross negligence claims alleged against her specifically should be dismissed pursuant to Mich. Comp. Laws § 691.1407(5). **Plaintiffs agree to dismiss their negligence count against Defendant Washington only.** Notably, however, Defendant does not argue that any of Plaintiffs' federal claims are barred or that the negligence claim is inappropriate as to any other Defendant, limiting this concession to claims against Washington under Mich. Comp. Laws § 691.1407.

(Pls.' Resp. 21, ECF No. 61 (emphasis added).)

Defendants correctly interpreted Plaintiffs' reference to the Fourteenth Amendment as applying the Eighth Amendment to the states and not to allege an independent cause of action for violations of due process rights.

(*Id.* 7 n.2.);

4. The Court granted the motion to dismiss without prejudice, (ECF No. 71);

5. Plaintiffs filed their amended complaint, (ECF No. 73), and the Court reopened the case, denying all Defendants' motions to strike, (ECF No. 84).

6. Plaintiffs and Defendants met and conferred on April 13, 2021. Consistent with the statements made by Plaintiffs in responding to Defendants' motion to dismiss, Plaintiffs agreed that they are not presently advancing negligence claims against Defendant Washington and that Plaintiffs are not seeking a standalone 14th Amendment cause of action.

7. The Defendants also represented during the conferral that Defendant

Johnson is no longer an employee of the MDOC. Following the conferral, the Defendants represented that McKee is no longer an employee of the MDOC. Given this, Plaintiffs agree that they do not seek injunctive relief from Defendant Johnson or Defendant McKee in their official capacities.

THEREFORE, IT IS NOW STIPULATED:

- a) Plaintiffs' amended class action complaint shall not be interpreted to include a standalone 14th Amendment cause of action;
- b) Plaintiffs agree to dismiss without prejudice their gross negligence claim against Defendant Washington; and
- c) Plaintiffs agree to dismiss without prejudice claims for injunctive relief against Defendants Johnson and McKee in their official capacities.

This matter having come before the Court by way of agreement amongst the parties, and the Court being otherwise fully advised in the premises:

IT IS SO ORDERED.

Dated: 4/26/2021

s/ Victoria A. Roberts
HON. VICTORIA A. ROBERTS
U.S. District Court Judge

Stipulated and Approved for Entry:

Dated: April 26, 2021

/s/Rebekah L. Bailey
NICHOLS KASTER, PLLP
Matthew H. Morgan (MN 304657)
Rebekah L. Bailey (MN 0389599)
Nicole J. Schladt (MN0400234)
80 South Eighth Street, Ste. 4700

/s/John L Thurber (w/ permission)
MI DEP'T OF ATTORNEY GEN.
Scott A. Mertens (P60069)
Kristen M. Heyse (P64353)
Michael Dean (P71333)
Zachary Austin Zurek (P80116)

Minneapolis, MN 55402
P: (612) 256-3200
F: (612) 338-4878
morgan@nka.com
bailey@nka.com
nschladt@nka.com

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P: (248) 398-9800
cmcgehee@pittlawpc.com
brivers@pittlawpc.com
crobinson@pittlawpc.com

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mertenss@michigan.gov
fosterj15@michigan.gov
thurberj@michigan.gov
heysek@michigan.gov
deanm2@michigan.gov
zurekz1@michigan.gov

ON BEHALF OF DEFENDANTS

sradner@excololaw.com

**ON BEHALF OF THE PLAINTIFFS
AND THE PUTATIVE CLASSES**